

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

CAROL KELSEY,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 3:21-01624
	:	
v.	:	(MANNION, D.J.) (MEHALCHICK, M.J.)
	:	
GEMMA DAVIS, et al.,	:	
	:	
Defendants	:	

ORDER

Presently before the court is the report and recommendation (“Report”) of Magistrate Judge Karoline Mehalchick, (Doc. 8). The Report recommends that this court, pursuant to [28 U.S.C. §1332](#) and [28 U.S.C. §1441](#), remand plaintiff’s Complaint, (Doc. 1-1), to the Court of Common Pleas for Philadelphia County on the basis of defect in the removal procedure. Neither party has filed objections to the Report.

Even where no objection is made, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” [Fed.R.Civ.P.72\(b\)](#) advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc.](#), 702 F.Supp.2d 465, 469 (M.D.Pa.2010) (*citing Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir.1987) (explaining judges should give some review to every

report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); M.D.Pa. Local Rule 72.31.

Judge Mehalchick's Report observes that in this action, which was removed to this court pursuant to 28 U.S.C. §1332, two of the defendants are citizens of Pennsylvania. (Doc. 8 at 7). The Report reasons that since two defendants are citizens of the state in which the action is brought, removal to this court would run afoul of the forum defendant rule and consequently, this action cannot proceed in this court pursuant to diversity jurisdiction. See *id.* For this reason, Judge Mehalchick recommends this court remand the plaintiff's Complaint based on defect in the removal procedure.

The court has conducted a thorough review of the Report, the pleadings, and the other filings of record, as well as the applicable law in this case agrees with Judge Mehalchick's sound reasoning which led her to her recommendation. Accordingly, the court will adopt the Report as the decision of this court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The Report of Judge Mehalchick, (Doc. 8), is

ADOPTED;

(2) Plaintiff's Motion to Remand, (Doc. 5), is **GRANTED;**

(3) Plaintiff's Complaint, (Doc. 1-1), is **REMANDED** to

the Court of Common Pleas for Philadelphia County

for further proceedings;

(4) The Clerk of the Court is directed to **CLOSE** the

case.

(5)

s/ Malachy E. Mannion

MALACHY E. MANNION

United States District Judge

DATE: February 25, 2022

21-01624-01